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NOTES.

LIABILITY OF A STOCKHOLDER UNDER A FOREIGN STATUTE.—The nature of the liability imposed upon a stockholder in a domestic corporation which is operating in a foreign jurisdiction and is subject to statutes there enacted, was raised in a recent English case. The Court decided that the liability to a creditor of a stockholder in a joint stock company limited, formed under the English Companies Act to do business in the United States, will be fixed by the provisions of that Act and not by the more severe liability imposed by the statutes of California, where the contract was made. *Risdon Iron Works* v. *Furness* [1905] 1 K. B. 304.

While there is great confusion in the early English law touching the conception of the corporation and the theory of the entity as applied to the *universitas* is not clearly defined, yet as regards the commonalty, or political corporation, there are cases as early as 1437 holding that the goods of the members could not be taken in execution against the commonalty, except where the King was the judgment creditor. Pollock & Maitland, Hist. Eng. Law, Bk. II, Chap. II, §12. When the business corporation developed, the "body politic" idea of the borough was adopted and although later rights against the stockholders upon the insolvency of the company were given to the creditors, it is commonly stated that the liability of the stockholder for the debts of the corporation was not known at common law, but was created by statute. *Terry* v. *Little* (1879) 101 U. S. 216; *Pollard* v. *Bailey* (1874) 20 Wall. 520.

As a basic proposition a corporation is controlled by the laws of the incorporating State, and its legal existence is confined thereto, except so far as the principles of comity have established extra-territorial recognition. *Bank of Augusta* v. *Earle* (1839) 13 Pet. 519; Beale, Foreign Corp., §442. The liability created by the laws of a foreign jurisdiction, in an action against a resident stockholder has been enforced, *Pulsifer* v. *Greene* (1902) 96 Me. 438, or denied,

Marshall v. *Sherman* (1895) 148 N. Y. 9, according to the varying theories as to whether the liability is contractual or one imposed by law. Cf. 5 COLUMBIA LAW REVIEW 606. On this contractual theory it has been held that where a corporation is formed for the express purpose of doing business in another State, and a creditor's action is brought in that State, the *lex fori* will be enforced against the stockholder. *Pinney* v. *Nelson* (1901) 183 U. S. 144. But in the case under consideration, the plaintiff was seeking to enforce a liability imposed by a foreign statute in derogation of the common law as well as in opposition to the limited liability of the English incorporating act. The question is suggested at once as to whether we have here a conflict of rights or of remedies. If the provisions of the English statute be regarded as establishing primarily a legal remedy, something connected with the enforcement of a right, then it is exclusive of all foreign statutes so far as that court is concerned. But if the double liability of the California statute can be regarded as a new right conferred upon the creditor and the conflict be one of rights and not of remedies, the *lex loci contractus* should prevail. See Dicey, Conflict of Laws, Chap. 31. In this respect there is a distinct tendency to enlarge the scope of the term "remedies," and where the right of action depends upon a foreign statute rather than upon the common law, to refuse to enforce it unless it is in practical conformity with the local statute. *Wooden* v. *R. R. Co.* (1891) 126 N. Y. 10; *Slater* v. *R. R. Co.* (1903) 194 U. S. 120; cf. 4 COLUMBIA LAW REVIEW 503. The result reached by the Court of King's Bench would seem a very proper conclusion of the foregoing argument. The Court had no power to enforce the California statute and, irrespective of the question whether a stockholder might under certain circumstances be held to have waived by contract, express or implied, the protection of the English limited liability acts, the decision is authority for the proposition that the stockholder's protection cannot be waived by the act of the corporation itself. This view of the character of the liability imposed seems to be adopted in New Jersey by statute. N. J. Corp. Supp., § 131; Beale, For. Corp., § 453.

PUBLIC USE IN EMINENT DOMAIN.—The courts of this country appear to be hopelessly divided as to what constitutes a public use to justify the taking of private property under the power of eminent domain. 4 COLUMBIA LAW REVIEW 133. It has been held that a right on the part of the public to use or control is an essential element. *Matter of Warehouse Co.* (1884) 96 N. Y. 42; *Gaylord* v. *Sanitary Dist.* (1903) 204 Ill. 576. But the tendency, first seen in the mill cases, *Olmstead* v. *Camp* (1866) 33 Conn. 532, to regard this view as too narrow has experienced a decided development. Especially is this true in the Western jurisdictions, where the courts very generally have upheld the taking of land for purposes of private irrigation and mining development. While these decisions in some cases are supported by specific Constitutional provisions, *Irrigation Co.* v. *Flathers* (1899) 20 Wash. 454; *Irrigation Co.* v. *Railroad Co.* (1902) 30 Colo. 204, and in others are brought within the conservative rule of *Gaylord* v. *Sanitary Dist.*, supra, by regarding those who take under the law as forming a quasi-public organization, *Irrigation Dist.* v.